

NOTICE OF INTENT

Department of Revenue Policy Services Division

Certain Imported Cigarettes (LAC 61:I.5101)

The Department of Revenue, in accordance with the provisions of R.S. 13:5062(10), R.S. 47:1511, and the Administrative Procedure Act, R.S. 49:951 et seq., proposes to adopt this rule. The rule is needed to establish procedures for obtaining information for the enforcement of the conditions of the Master Settlement Agreement.

In 1998, leading tobacco product manufacturers, 46 states including Louisiana, several territories and the District of Columbia, reached an agreement that settled existing and potential claims by the jurisdictions against the manufacturers. As part of the “Master Settlement Agreement,” Louisiana was to implement either the model statute or a “qualifying statute” requiring escrow payments by tobacco product manufacturers who had not participated in the settlement. During the 1999 Regular Legislative Session, Act 721, effective July 1, 1999, enacted R.S. 13:5061 et seq., establishing certain requirements for tobacco product manufacturers. This Act included the requirement that nonparticipating manufacturers establish a reserve fund to guarantee a source of compensation against future health claims. The nonparticipating manufacturers are to pay into the reserve fund, or escrow account, a specified amount per unit sold during the respective year and are to annually certify to the attorney general that they are in compliance. The number of units sold is to be measured by the excise taxes collected by the state on cigarettes, including roll-your-owns, as defined at R.S. 13:5062(4). The provisions of R.S. 13:5062(10) state that the Department of Revenue shall adopt rules necessary to ascertain the amount of state excise tax paid each year on the products made by the nonparticipating tobacco manufacturers.

To obtain the requisite information, the Department of Revenue and the Tobacco Settlement Enforcement Unit of the Louisiana Department of Justice developed a schedule for reporting tobacco products made by nonparticipating manufacturers that were subsequently imported into Louisiana, either directly from the manufacturer or through a distributor, for sale, use, or consumption within this state. Since the schedule’s distribution, a number of tobacco wholesale dealers have failed to comply with the Secretary’s instructions to submit the schedule with their monthly return. Without complete compliance in providing the requested information to assure diligent enforcement of the provisions of R.S. 13:5061 et seq., the state of Louisiana faces the possible reduction in the payments under the Master Settlement Agreement and can be penalized for the loss of market share experienced by other participating states if such loss can be attributed to Louisiana’s lack of enforcement of the provisions of the Master Settlement Agreement.

This rule establishes the manner by which the information is to be provided and addresses penalties that may be imposed on registered tobacco dealers who fail to comply.

Title 61

DEPARTMENT OF REVENUE

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 51. Tobacco Tax

§5101. Reporting of certain imported cigarettes; penalty

A. Every registered wholesale tobacco dealer receiving cigarettes or roll-your-own tobacco made by a tobacco product manufacturer who is not participating in the Master Settlement Agreement, whether the product is purchased directly from the manufacturer or through a distributor, retailer or similar intermediary or intermediaries, must furnish the following information:

1. invoice number;
2. manufacturer’s name and complete address;
3. quantity of product obtained, i.e. number of cigarettes or ounces of roll-your-own tobacco as defined at R.S. 13:5062(4);
4. product brand name;
5. whether the product was shipped directly from the manufacturer;
6. name and address of the seller if other than the manufacturer; and
7. any other information that may be requested by the secretary.

B. The information required by Subsection A is to be provided on a form prescribed by the secretary and must be submitted with and at the same time as the monthly tobacco report. If, during the reporting period, there were no purchases of a product made by a manufacturer who is not participating in the Master Settlement Agreement, such is to be indicated on the prescribed form and the form attached to the monthly tobacco report.

C. Any registered wholesale tobacco dealer who fails to comply with the reporting requirement or provides false or misleading information in response to Subsection A may be subject to the revocation or suspension of any permit issued under R.S. 47:844, in accordance with R.S. 47:844(A)(4).

D. When it is determined that a registered wholesale tobacco dealer is not in compliance with this rule, the secretary shall give that wholesale dealer written notice by registered mail of the noncompliance and request compliance within 15 days. Upon a second instance of noncompliance with this rule, the secretary shall, by registered mail, inform the wholesale dealer of the noncompliance and request the wholesale dealer to, within 10 days, show cause why the wholesale dealer's permit shall not be suspended. Upon a third instance of noncompliance with this rule, the secretary shall, by registered mail, inform the wholesale dealer of the noncompliance and request the wholesale dealer to show cause, on a date and time set by the secretary, as to why the wholesale dealer's permit shall not be suspended. If the wholesale dealer does not comply with the terms of this rule after the hearing, the secretary shall suspend the wholesale dealer's permit for a period of at least 30 days, or until such time as the dealer has become compliant. Failure to properly respond to written notification of noncompliance shall constitute a subsequent instance of noncompliance.

E. The information furnished under Subsection A may be disclosed as provided in R.S. 47:1508(B)(11).

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5062 and R.S. 47:1511

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Legal Affairs, Policy Services Division, LR 28: _____

Interested persons may submit data, views, arguments, information, or comments on this proposed rule in writing to Linda Denney, Senior Policy Consultant, Office of Legal Affairs, Policy Services Division, 617 North Third Street, Baton Rouge, LA 70802 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Tuesday, February 26, 2002. A public hearing will be held on Wednesday, February 27, 2002 at 2:00 p.m. at 617 North Third Street, Baton Rouge, LA.